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# Explainer: what are the legal implications of the South China Sea ruling?

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# Explainer: what are the legal implications of the South China Sea ruling?

## **Abstract**

The ruling in the case brought by the Philippines against China's activities in the South China Sea is significant - not just because it involves China, but because it tackles key ambiguities and uncertainties in the United Nations Convention on the Law of the Sea (UNCLOS).

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# THE CONVERSATION



## Explainer: what are the legal implications of the South China Sea ruling?

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The decision on China's activities in the South China Sea is hugely significant for the development of the Law of the Sea. EPA

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The ruling in the case brought by the Philippines against China's activities in the South China Sea is significant – not just because it involves China, but because it tackles key ambiguities and uncertainties in the United Nations Convention on the Law of the Sea (UNCLOS).

### The decision

Both China and the Philippines are parties to UNCLOS. As it arose from the convention, the tribunal that heard the case could not resolve the core sovereignty issues at stake – that is, who owns which feature.

The key findings can be summarised as follows:

Any historic rights to resources in the waters within China's apparent claim to areas within the so-called nine-dash line were extinguished where they were incompatible with the maritime zones set out under UNCLOS.

None of the disputed above-high-tide features in the Spratly Islands, individually or collectively, are capable of generating extended maritime claims (beyond a 12-nautical-mile territorial sea).

China has violated the sovereign rights of the Philippines in its exclusive economic zone (EEZ) by interfering with Philippine fishing and petroleum exploration activities, constructing artificial islands, and failing to prevent Chinese fishermen from fishing in the Philippines' EEZ.

China has caused severe harm to the coral reef environment and violated its obligation to preserve and protect fragile ecosystems and the habitat of depleted, threatened or endangered species through its recent large-scale land reclamation and construction of artificial islands on seven features in the South China Sea.

China has aggravated the dispute since the start of the arbitration process, particularly through large-scale land reclamation and artificial island construction activities, which have inflicted irreparable harm on the marine environment.

## Reinforcing the rule of law at sea

By tackling key “unfinished business” in the Law of the Sea, especially countering apparently historically inspired unilateral claims to maritime spaces, as well as clarifying the status of insular features and their capacity to generate broad maritime claims, the decision is hugely significant for the Law of the Sea’s development and international law generally.

UNCLOS is a remarkable treaty. Almost all countries subscribe to it. While it is notable that the United States is not a party, the US nonetheless conducts its maritime claims and policies in line with the convention’s terms.

A key achievement of the convention was agreement on an overarching spatial framework of maritime claims. This includes a territorial sea out to 12 nautical miles and an EEZ out to a 200-nautical-mile limit. These expansions of maritime claims offshore are balanced by the rights of other states in these zones – for example, by guaranteeing freedom of navigation.

Exceptions to the rule threaten this structure. Some countries sign up to the convention’s terms but still try to maintain more expansive unilateral claims, often justified on hazy historical grounds.

This ruling arguably closes loopholes and counters temptations to engage in exceptionalism on the part of some countries.



The disputed South China Sea area. Author/American Journal of International Law

## Does it matter?

The decision undoubtedly represents a sweeping victory for the Philippines. It is, however, unenforceable. And from the outset China has refused to recognise the tribunal's jurisdiction.

China's reaction to the verdict was swift and uncompromising. A Foreign Ministry statement declared the decision was "null and void with no binding force".

Nonetheless, the tribunal did evaluate whether it had the jurisdiction to hear the case. For the most part, it determined it did on questions related to the Law of the Sea. As far as the tribunal is concerned, the award is legally binding on China as a party to UNCLOS.

China appears highly likely to simply ignore the ruling, at least in the near term. Its vigorous opposition to the decision may also lead to escalation – for instance, an intensification of China's island-building campaign in new locations and an increase in enforcement actions within the nine-dash line. This may lead to a proliferation of incidents with other South China Sea countries and a distinct rise in regional tensions.

The decision's longer-term value may be profound, however. It fundamentally undermines key aspects of China's position in the South China Sea. This will undoubtedly inform future interactions between China and its neighbours.

The guardedly good news is China has already indicated it will seek to "maintain peace and stability in the South China Sea" in accordance with international law.

This indicates it is unlikely to disrupt freedom of navigation and trade through a water body that carries US\$5 trillion per year in trade. That includes almost one-third of the global oil trade, over half of global liquefied natural gas exports and more than half of Australia's international trade by value.

## Implications beyond the South China Sea

The ruling has the potential to reach far beyond the South China Sea and transform the international maritime map.

It indicates historic claims cannot be readily sustained. This undermines the unilateral claims of certain countries – such as Canada's historical claims related to its Arctic archipelago.

Even though the ruling is technically only binding on China and the Philippines, it carries considerable legal weight as an authoritative and unanimous ruling by an international judicial body. As a result of uncertainties over which insular features can generate what maritime zones, many countries have advanced expansive maritime claims from small islands. These claims are now in jeopardy.

For example, the US claims 200-nautical-mile EEZs from several remote Pacific island territories that appear remarkably similar to some of the South China Sea features that the tribunal found could not generate extended maritime claims. The US welcomed the ruling, but it will be intriguing to see whether the US and other countries modify their practices in light of it.



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